

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

MARCO ANTONIO RUIZ,

Plaintiff,

vs.

DIANE TONEY, N.P.; AND
COMMUNICARE HEALTH
FOUNDATION,

Defendants.

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SA-22-CV-01169-JKP

ORDER

Before the Court in the above-styled cause of action is the Motion to Substitute Defendants and Amend Case Caption filed by the United States of America [#16]. By its motion, the United States asks the Court to substitute it in place of Defendants Diane Toney, N.P., and Communicare Health Foundation as the sole Defendant in this action and for the case caption to be amended accordingly. Plaintiff's response to the motion was due on or before March 20, 2023. *See* W.D. Tex. Loc. R. CV-7(d). To date, no response has been received. The Court will grant the motion as unopposed and for the reasons that follow.

Plaintiff's claims in this case arise out his medical treatment by Toney, a nurse practitioner employed by Communicare Health Foundation. (Am. Compl. [#7], at ¶¶ 14–15.) Plaintiff alleges that he suffered a stroke due to the negligent care of Toney, who failed to manage his medication therapies leading up to the stroke. (*Id.* at ¶¶ 12–19.) Plaintiff asserts jurisdiction in this case is founded on the Federal Tort Claims Act (FTCA). (*Id.* at ¶ 6.) Section 2679 of the FTCA provides that a suit against the United States is the exclusive remedy for damages for injury or loss of property “resulting from the negligent or wrongful conduct of any

employee of the Government while acting within the scope of his office or employment.” 28 U.S.C. § 2679(b)(1).

Plaintiff’s First Amended Complaint collectively refers to Toney and the Communicare Health Foundation in the body of the pleading as “the United States of America.” (Am. Compl. [#7], at ¶ 1.) In an earlier filing related to subject matter jurisdiction, Plaintiff explained that Defendants “are deemed employees” of the Public Health Service, which is a federal agency. (Show Cause Response [#5], at 1–2.) Plaintiff therefore alleges he was injured by a federal employee acting within the scope of her federal employment. (Am. Compl. [#7], at ¶ 26.)

Pursuant to the Federally Supported Health Centers Assistance Act, only the United States can be sued for medical negligence by Public Health Service employees. 42 U.S.C. § 233(g)-(n). The United States attaches to its motion a certification that Toney and the Communicare Health Foundation are deemed employees of the Public Health Service at the time of the alleged incidents and appear to have been acting within the scope of their federal employment at all relevant times alleged in the Petition. (Certification [#16-1], at 1.) The Court therefore agrees with the United States that it is the only proper defendant in this FTCA action. *See Galvin v. Occupational Safety & Health Admin.*, 860 F.2d 181, 183 (5th Cir. 1988).

IT IS THEREFORE ORDERED that the Motion to Substitute Defendants and Amend Case Caption filed by the United States of America [#16] is **GRANTED**.

IT IS FURTHER ORDERED that the United States of America be substituted in the place of Diane Toney and the Communicare Health Foundation as Defendant in this action and the case caption be amended accordingly.

IT IS SO ORDERED.

SIGNED this 23rd day of March, 2023.



ELIZABETH S. ("BETSY") CHESTNEY
UNITED STATES MAGISTRATE JUDGE